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Submitted

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. ~~136.~~ 206

CHARLES G. SCOTT

vs.

THE UNITED STATES.

APPEAL FROM THE COURT OF CLAIMS.

FILED MARCH 21, 1870.

SUPREME COURT OF THE UNITED STATES.

No. 436.

CHARLES G. SCOTT

vs.

THE UNITED STATES.

APPEAL FROM THE COURT OF CLAIMS.

INDEX.

	Original.	Print.
Claimant's petition	1	1
Traverse by the Assistant Attorney General	5	3
Final judgment by the court	6	4
Application of counsel for claimant for allowance of appeal	7	4
Order of Chief Justice Casey allowing appeal	7	4
Finding of facts and conclusions of law	8	4
Certificate	10	6

1 United States Court of Claims.

CHARLES G. SCOTT
vs.
THE UNITED STATES. } 3679.—Filed Nov. 19, 1868.

To the honorable the judges of the Court of Claims:

The petition of Charles G. Scott of Little Rock, in the State of Arkansas, respectfully represents—

That on the 13th day of February, 1866, he entered into a contract with Col. Henry T. Noble, chief quartermaster of the Department of Arkansas, for the transportation of government troops and supplies from Little Rock to Fort Smith, and all intermediate landings. Said contract was to go into effect on the 20th day of February, 1866, and was to expire on the 31st day of December, 1866. A copy of said contract is hereunto annexed, and marked Exhibit "A."

And your petitioner avers that, at the time said contract was executed, it was mutually understood and agreed by and between said Col. H. T. Noble and your petitioner, the words "all transportation the United States may require," as used in said contract, were designed and intended to mean all the troops and supplies which the United States might have to be transported over said route.

And your petitioner further says that, for the purpose of faithfully and fully carrying out the requirements of said contract on his part, he, immediately after the execution thereof, chartered the steamers "J. S. Hall," "Pilgrim," "American," and "Argos;" and fearing that these boats were not of sufficiently light draught for all the requirements of said service in extreme low water, he built two other steamers at Pittsburg,

2 Pennsylvania, to wit, the "Van Buren" and "Fort Smith;" for which said last-mentioned vessels he paid the sum of $30,000.

Said last-mentioned vessels are of very light draught, and capable of transporting troops and supplies at the very lowest stage of the water.

And your petitioner further says that, during the entire lifetime of said contract, some one or more of the above-named steamboats were always kept in readiness at the wharf in Little Rock to transport troops and supplies in accordance with the terms of said contract, and that even at times when they might have been otherwise profitably employed in the transportion of private freight.

Your petitioner avers that on one occasion the quartermaster in charge at Little Rock called upon him for immediate transportation of a greater quantity of supplies to Fort Smith than all the vessels above named could carry, and that on that occasion your petitioner, at great expense to himself, employed the steamers "Florence Traber" and "Prairie State" for that especial service; that he always held himself in readiness to fulfill the requirements of said contract on his part in the fullest sense of the word, and never failed in a single instance to transport any stores or troops given him for transportation with alacrity and promptness.

And your petitioner further says that in defiance of said contract, and of the meaning and intention thereof, and while the same was subsisting and in full force and effect, the United States transported over said route, in their own vessels and in vessels belonging to other parties, a large amount of government troops, stores, and animals, the freight upon which, computed by the standard fixed in said contract, amounts to

$17,605 66; that the items of such transportation are not now accessible by your petitioner, but will be produced and proved as this honorable court shall direct.

Your petitioner alleges that, by reason of the premises there is due and owing from the United States to him the sum of $17,605 66, for the transportation of the troops, stores, and animals aforementioned, all of which he avers, and is ready to prove, as this honorable court may direct,
were transported without his consent over the route for which he
3 had a subsisting and exclusive contract, and when his boats were
ready and waiting to transport the same.

Your petitioner has always borne true allegiance to the government of the United States, is a citizen thereof, and has never voluntarily aided, abetted, or given encouragement to the rebellion against said government.

Your petitioner therefore prays that a judgment may be rendered in his favor against the United States for the sum above claimed, and that such other and further relief may be granted to him as shall accord with law and equity.

CHIPMAN & HOSMER,
Attorneys for Claimant.

STATE OF ARKANSAS, *County of Pulaski, ss:*

Charles G. Scott, of said county, being duly sworn, says that no assignment or transfer of the claim mentioned in the foregoing petition, or any part thereof, has ever been made to any person whomsoever, and that he is justly entitled to the amount claimed in said petition from the United States, after deducting all just credits and offsets, and that the facts as set forth in said petition are true.

CHARLES G. SCOTT.

Sworn and subscribed before me this 21st day of October, 1868.
Witness my hand and official seal.
[L. S.]

GEO. W. McDIARMED,
County Clerk.

Exhibit "A."

This contract, made and entered into this 13th day of February, A. D. 1866, at the city of Little Rock, in the State of Arkansas, between Colonel Henry T. Noble, assistant quartermaster United States volunteers, of the first part, and Charles G. Scott, of the city of Little Rock, and State of Arkansas, of the second part—

Witnesseth, that the said party of the second part agrees to furnish all transportation the United States may require from Little Rock, Arkansas, to Fort Smith, Arkansas, and to and from all points between
Little Rock, Arkansas, and Fort Smith, Arkansas, when the same
4 is to be furnished by river; the boats used in such transportation
must be such as shall be safe and satisfactory to the chief quartermaster of the Department of Arkansas; they shall be owned and officered by good loyal citizens; furnished with proper facilities for cooking rations for troops, and feeding horses and cattle; said boats are to run subject to the risk of the owners.

It is agreed that the contracting parties shall give precedence and prompt despatch to transportation for the United States, and in no case to carry private freight to the exclusion of that belonging to the government.

In case the said parties of the second part fail to furnish the transportation required by government, the quartermaster may furnish the same at the expense of the said parties of the second part, and deduct from any vouchers to be given for services under this contract all amounts paid in excess of rates hereby established.

For these services Colonel Henry T. Noble, assistant quartermaster, agrees, on behalf of the United States, to pay, or cause to be paid, to the said parties of the second part, compensation at the following rates:

From Little Rock to Fort Smith, Arkansas, or return:

For commissioned officers	$12 00	each
enlisted men and employees	7 50	"
horses	12 00	"
mules	10 00	"
wagons	15 00	"
hay, (baled,) per hundred pounds	1 95	
all other pound freight, per hundred pounds	1 47½	

way freight to be transported at proportionate rates.

This contract to go into effect on the 20th day of March, and to remain in force until the 31st day of December, A. D. 1866. Payment to be made, in such funds as may be furnished for this purpose by the United States, monthly.

It is made an express condition of this contract that no member of Congress shall be admitted to any share or part herein, or to any benefit to arise herefrom.

In witness whereof said parties have signed this contract in quintuplicate this 13th day of February, 1866.

(S'g'd) HENRY T. NOBLE,
Colonel and Ass't Quartermaster, U. S. V.
(S'g'd) CHARLES G. SCOTT.

Witnesses:
(S'g'd) CHA'S V. TENNEY.
(S'g'd) THOMAS HARRIS.

The alteration in the date upon which this contract goes into effect, changed by consent of both parties, the 20th day of March, was inserted by mistake; it should have been February.

(S'g'd) HENRY T. NOBLE,
Col. and A. Q. M.
(S'g'd) CHARLES G. SCOTT.

5 In the United States Court of Claims.—December term, A. D. 1868.

CHA'S G. SCOTT
vs.
THE UNITED STATES. } No. 3679.

And the said defendants, by their Attorney General, come and make answer to the petition of the claimant herein; and, not confessing the same, or any part thereof, deny each and every the allegations therein contained, and call for strict proof of the same.

And as to so much of the said petition as sets forth and avers that the said United States are indebted to the said claimant in the sum of seventeen thousand six hundred and five $\frac{66}{100}$ dollars, the said defend-

ants say that they are not indebted to the said claimant in the said sum of money, nor any part thereof.

And as to so much of the said petition as avers that the said claimant has at all times borne true faith and allegiance to the government of the United States, and never volunturily aided, abetted, or given encouragement to rebellion against said government, the said defendants deny the said allegation.

T. LYLE DICKEY,
Assistant Attorney General.

6 In the Court of Claims.

CHARLES G. SCOTT
vs.
THE UNITED STATES. } No. 3679.

And now, to wit, 24th of May, A. D. 1869, the court, upon due consideration of the premises, find in favor of the defendants, and do order, adjudge, and decree that the said Charles G. Scott, claimant, take nothing by his suit, and that his petition be dismissed.

By the court.

7 In the Court of Claims.—Dec. term, 1868.

CHA'S G. SCOTT
vs.
THE UNITED STATES. } No. 3679.

Now comes the petitioner in the above-entitled cause, and, by his attorneys of record, prays the court to grant an appeal to the Supreme Court of the United States from the final judgment of this court rendered 24 May, 1869.

CHIPMAN & HOSMER,
Att'ys of Record.

Filed in the clerk's office, July 22, 1869.

At chambers.

Ordered, that the appeal in the case of Cha's G. Scott vs. the United States, No. 3679, be allowed.

July 22, 1869.

JOS. CASEY,
Ch. J. C't of Claims.

8 In the Court of Claims.

CHA'S G. SCOTT
vs.
THE UNITED STATES. } 3679.

The finding of facts, and the conclusions of law on said facts on which the court founded its opinion.

In this case the petitioner claimed damages against the United States for breach of contract. And the court found the facts to be—

That on the 13th day of February, 1866, a contract was made in writing between Col. Noble, chief quartermaster of the Department of Arkansas, on the part of the United States, of the first part, and the petitioner, of the second part, a copy of which is hereto annexed, marked A.

The petitioner procured, manned, and fitted the steamboats necessary for the performance of said contract, and kept them in serviceable condition during the continuance of the contract, and duly performed the transportation required of him by the United States.

In the year 1866, and between the 25th of April and the thirty-first of October, military supplies and troops were shipped by the United States at St. Louis, to be transported thence to Fort Smith and Fort Gibson; and on their way to their destination the vessels having the supplies and troops on board, touched at Little Rock, but did not discharge there.

While the vessels were at Little Rock the petitioner, in a written communication to Col. Noble, claimed the transportation to Fort Smith of said supplies and troops from St. Louis, under his contract, and he had vessels ready and fit for the transportation of said supplies and troops, but they were not delivered to him.

Had the petitioner transported the said supplies and troops under his contract, the freight therefor would have amounted to the sum of $17,605 66.

And the court held as a conclusion of law that the transportation from St. Louis to Fort Gibson and Fort Smith was not within the route for which the claimant contracted. And the petition was dismissed.

Exhibit "A."

This contract, made and entered into this 13th day of February, A. D. 1866, at the city of Little Rock, in the State of Arkansas, between Colonel Henry T. Noble, assistant quartermaster United States volunteers, of the first part, and Charles G. Scott, of the city of Little Rock, and State of Arkansas, of the second part—

Witnesseth, that the said party of the second part agrees to furnish all transportation the United States may require from Little Rock, Arkansas, to Fort Smith, Arkansas, and to and from all points between Little Rock, Arkansas, and Fort Smith, Arkansas, when the same is to be furnished by river; the boats used in such transportation must be such as shall be safe and satisfactory to the chief quartermaster of the Department of Arkansas; they shall be owned and officered by good loyal citizens; furnished with proper facilities for cooking rations for troops, and feeding horses and cattle; said boats are to run subject to the risk of the owners.

It is agreed that the contracting parties shall give precedence and prompt despatch to transportation for the United States, and in no case to carry private freight to the exclusion of that belonging to the government.

In case the said parties of the second part fail to furnish the transportation required by government the quartermaster may furnish the same at the expense of the said parties of the second part, and deduct from any vouchers to be given for services under this contract all amounts paid in excess of rates hereby established.

For these services Colonel Henry T. Noble, assistant quartermaster, agrees, on behalf of the United States, to pay, or cause to be paid, to the said parties of the second part, compensation at the following rates:

ants say that they are not indebted to the said claimant in the said sum of money, nor any part thereof.

And as to so much of the said petition as avers that the said claimant has at all times borne true faith and allegiance to the government of the United States, and never volunturily aided, abetted, or given encouragement to rebellion against said government, the said defendants deny the said allegation.

T. LYLE DICKEY,
Assistant Attorney General.

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CHARLES G. SCOTT
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The petitioner procured, manned, and fitted the steamboats necessary for the performance of said contract, and kept them in serviceable condition during the continuance of the contract, and duly performed the transportation required of him by the United States.

In the year 1866, and between the 25th of April and the thirty-first of October, military supplies and troops were shipped by the United States at St. Louis, to be transported thence to Fort Smith and Fort Gibson; and on their way to their destination the vessels having the sup-
9 plies and troops on board, touched at Little Rock, but did not discharge there.

While the vessels were at Little Rock the petitioner, in a written communication to Col. Noble, claimed the transportation to Fort Smith of said supplies and troops from St. Louis, under his contract, and he had vessels ready and fit for the transportation of said supplies and troops, but they were not delivered to him.

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From Little Rock to Fort Smith, Arkansas, or return:

For commissioned officers	$12 00	each.
Enlisted men and employees	7 50	"
Horses	12 00	"
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Hay, (baled,) per hundred pounds	1 95	
All other pound freight, per hundred pounds	1 47½	

Way freight to be transported at proportionate rates.

This contract to go into effect on the 20th day of March, and to remain in force until the 31st day of December, A. D. 1866. Payment to be made, in such funds as may be furnished for this purpose by the United States, monthly.

It is made an express condition of this contract that no member of Congress shall be admitted to any share or part herein, or to any benefit to arise herefrom.

In witness whereof said parties have signed this contract in quintuplicate, this 13th day of February, 1866.

(S'g'd) HENRY T. NOBLE,
Colonel and Ass't Quartermaster U. S. V.
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Witnesses:
(S'g'd) CHA'S V. TENNEY.
(S'g'd) THOMAS HARRIS.

The alteration in the date upon which this contract goes into effect, changed by consent of both parties, the 20th day of March was inserted by mistake; it should have been February.

(S'g'd) HENRY T. NOBLE,
Col. and A. Q. M.
(S'g'd) CHARLES G. SCOTT.

10 In the Court of Claims.

CHARLES G. SCOTT
vs.
THE UNITED STATES. } No. 3679.

I, John Randolph, assistant clerk of the Court of Claims, do hereby certify that the foregoing are true transcripts of the pleadings in the above-entitled cause, and the final judgment of the court thereon; of the application of the counsel for the claimant for the allowance of an appeal, as filed in the clerk's office, July 22, 1869, and of the order of the Chief Justice of said court, at chambers, allowing the same; of the finding of facts, and the conclusions of law on said facts on which the court founded its judgment.

In testimony whereof I have hereunto set my hand and affixed the seal of said court, at Washington, this fourteenth day of December, A. D. 1869.

[SEAL.] JOHN RANDOLPH,
Ass't Clerk Court of Claims.

(Indorsement on cover:) No. 436. Charles G. Scott, appellant, vs. the United States. Court of Claims.
Filed 21st March, 1870.

In the Supreme Court of the United States.

DECEMBER TERM, 1870.

CHARLES G. SCOTT
vs.
THE UNITED STATES.
No. 206.

APPEAL FROM THE COURT OF CLAIMS.

BRIEF FOR SCOTT.

The facts necessary to a proper determination of this case appear so fully in the record, and in the case reported in 4 *Nott & Huntington Rep.*, pp. 241–248, it will not be required here to recite the contract or any of the depositions.

The case turns solely upon the meaning of the contract. There is no dispute about Mr. Scott's complying with his contract in every particular; but the controversy arises upon the extent of the contract. At great cost and expense, as the record shows, Mr. Scott provided and held ready all the means of transportation required to carry out his contract; but between the spring and fall of 1866 large amounts of supplies, as well as large numbers of troops, were sent round from St. Louis, by the way of Little Rock, up the Arkansas river, to Fort Smith and Fort Gibson, on transportation other than that furnished by Scott, while Scott held his boats there ready to be used to convey the same; and of this he notified the officer representing the Government. This officer, however, declined to deliver these supplies and troops to Scott, and declined to pay him, or to see that he was paid, the freight and charges therefor—$17,605 66. Scott was ready and willing and fully prepared to perform this duty; and no

one questions his right, therefore, to the payment of this sum, if his contract embraced this kind of freight and supplies, although he did not actually carry the same. But the Government contends that the contract did not include transportation from St. Louis, by the way of Little Rock, to Fort Smith and Fort Gibson; and the Court of Claims sustained this view of the case. The words of the contract are, that Scott should "*furnish all transportation the United States may require from Little Rock, Arkansas, to Fort Smith, and to and from all points between Little Rock and Fort Smith, when the same is to be furnished by water.*"

This transportation was to Fort Smith, was by river, it was required by the Government, and it was from Little Rock; but *it did not start in the first instance from Little Rock*, and therefore it is held, Scott was not entitled to his claim. This is all there is of the case; and whatever conclusion may be reached as to the law of the case, it is certain the construction placed upon the contract is quite narrow.

Upon a careful review of the whole contract, it is submitted, the construction given by the Court of Claims is not supported by law. The court will consider the circumstances under which this contract was made, as well as the situation of the parties to it, and in fact all the surroundings of the agreement. In the then condition of the country, Little Rock of itself was no supply market, and nearly all the supplies that came there, or that were sent from there, came from St. Louis and other points north and east of Little Rock. The federal army of that section, holding Little Rock as a main post, had troops and supplies sent there, to be again transported from there to other points above that place. And as the contract speaks of that kind of transportation, the law presumes the parties contracted for all of that class or kind of transportation. The terms are general and broad enough to include all such transportation; and, unless there is some exception in the contract, or one clearly deducible from its language, the court should not make any exception. (2 *Parsons Cont.*, (4th ed.,) 11, *et seq.*; *Ib.*, 27, *et seq.*; 1 *Pothier Ob.*, 53, *et. seq.*)

To limit this contract to troops and supplies to be sent from Little Rock and intermediate points, in the first instance, not only destroys it as to Mr. Scott, but it denies to him the competency to contract, as he made a contract which had nothing upon which to operate; and no construction will be resorted to to render the contract valueless, but always that construction is adopted which maintains and enforces the contract. (2 *Parsons Cont.*, 15–18; *Pothier, sup.*)

It does not comport with the reason of the thing to conclude that Mr. Scott would, at great expense and trouble, procure boats and keep them prepared and ready to transport troops and supplies, as it is proved he did, for the mere purpose of carrying only the very limited number of troops and amount of supplies that could by any possibility come within his contract, as interpreted by the Court of Claims. Such a construction does not give Mr. Scott credit for mental capacity sufficient to contract at all, nor to perform any contract, if made.

The question here is not, as is so commonly asserted in interpreting contracts, what the parties to this contract really meant; but it is what they might *reasonably be understood* to have meant. (*Phillipps Jurisp.*, 108–109.)

The parties could not have reasonably been understood to have meant anything else than that Mr. Scott should furnish transportation for all troops and supplies from Little Rock and intermediate points to Fort Smith, let them come from what point or points they might to Little Rock.

It is submitted, the conclusion of the Court of Claims, as to this agreement, is erroneous. If this contract is of doubtful import, and may well be understood, as both the parties insist, the law requires that construction which is favorable to Mr. Scott; since the officer of the Government relied upon an ambiguous promise, he may fairly be required to make sure that he understands it. (*Phillipps, sup.*)

Occupying the position of the colonel of the army who made this contract, it was obligatory upon him to make his intention plain; and, if he did not, the interpretation must

be against him. (1 *Domat Civ. Law*, 168, 169; 1 *Pothier Ob.*, 58, *et seq.*; *Angell Life Ins.*, § 292; 2 *Parsons Cont.*, 19–22.)

This was the contract of the Government through her officer, and the language used is his; and the construction must be against him in whose language the agreement is expressed. (*The Ada*, *Davies C. C.*, 407.) This salutary rule, as to individual contracts, is not different when the contracts of governmental agents are to be passed upon. (See an article on "*Government Contracts*," 4 *American Law Review*, (October, 1869,) 1, *et seq.*)

For these reasons a reversal of the judgment below is respectfully asked.

A. H. GARLAND,
For Scott.

Supreme Court of the United States.

CHARLES G. SCOTT
vs.
THE UNITED STATES.
No. 206.

APPEAL FROM THE UNITED STATES COURT OF CLAIMS.

BRIEF OF APPELLANT.

From the record in this case it appears that the only question presented is as to the proper construction of the contract, particularly of the following clause:

"The said party of the second part agrees to furnish all transportation the United States may require from Little Rock, Arkansas, to Fort Smith, Arkansas, and to and from all points between Little Rock, Arkansas, and Fort Smith, Arkansas, when the same is to be furnished by river."

If there be any ambiguity (which is denied) in the letter of this contract, it is found in the expression "all the transportation the United States *may require*." The verb "to require" has two about equally common significations: that of *to direct* or *compel*, and that of *to need* or *want*. If the parties used the word in the first of these two senses, the claimant was entitled to no transportation except such as the agents of the United States might choose to direct him to perform; if in the latter, he had the right to demand all the freight and passengers which the United States might need to have transported over his route. But between these two constructions there certainly can be no middle ground.

The word must be understood in one of its ordinary senses, and not in a third—a kind of compromise between the two—which it never has.

I. It is manifest that it was not the intention of the parties to use this word in the former of these senses, because—

First. If that were the case, the petitioner would have been at the mercy of the Government. He would have been obliged to provide, at great expense, boats, "safe and satisfactory," to the Quartermaster, "owned and officered by good loyal citizens," "furnished with proper facilities for cooking rations for troops and feeding horses and cattle;" he would have been bound to hold himself ready to "give precedence and prompt dispatch to transportation for the United States, and in no case to carry private freight to the exclusion of that belonging to the Government." And yet the United States would not have been bound to give him a single passenger or a single pound of freight to carry, because by such a contract he would have the right to carry only such freight and passengers as it might please the agents of the United States to *require* (direct) him to transport.

Second. There is another paragraph in the agreement which shows, clearly enough, what was meant by the phrase, "all the transportation the United States may require." It is this:

"In case the said parties [party] of the second part fail [fails] to furnish the transportation required by the Government, the quartermaster may furnish the same at the expense of the" contractor.

This gave to the United States the right to give the transportation to others, when the contractor should be in default; and it follows, of course, that it was not to be given to others when he was ready and willing to take it. *Expressio unius est exclusio alterius.*

Third. It has been decided already by this court, that, "where the obligation of one party to a contract requires of him the expenditure of a large sum in preparation to perform, and a continuous readiness to perform, the law implies a corresponding obligation on the other party to do

what is necessary to enable the first to comply with the agreement."

United States *v.* Speed, 8 Wall., 77.

II. It was intended, then, that the claimant should have *all* the government transportation over the route in question; and it remains to consider only the finding of the court of claims, "that the transportation from St. Louis to Fort Gibson and Fort Smith, was not within the route for which the claimant contracted."

That was never claimed. But the claimant always maintained, and now maintains here, that he was entitled, under his contract, to *all* the government transportation from Little Rock to Fort Smith, without regard to its original starting point or ultimate destination.

First. The contract imposed upon the contractor the duty of being prepared, during the lifetime of the contract, to transport all the freight and passengers the United States might need to have carried from Little Rock to Fort Smith, *without any exception whatever*. Therefore, as such a contract would be construed by every fair-minded man—and, as in the case of the United States *v.* Speed, a similar agreement was construed by this court—he had the right to demand all such transportation, without any exception whatever.

Suppose the contractor had failed to provide the boats, as he agreed to, and that the quartermaster had then stopped these boats from St. Louis at Little Rock, landed the freight and passengers there, and ordered the claimant to carry them to Fort Smith, "with prompt dispatch:" would *he* have been allowed to plead, that "the transportation from St. Louis to Fort Smith was not in the route for which he contracted?" And if the obligation was upon him to be ready to forward supplies and men from whatever quarter they might come, what was the "corresponding obligation on the other party," referred to in the case of Speed? Plainly, to give to the contractor the freight and passengers he was bound to be ready to take, and which, with boats in readi-

ness, arranged and officered as required by his agreement, and kept in running order at great expense, he demanded.

Second. If anything can be said in extenuation of the course of the Government officials in sending supplies and men from Little Rock to Fort Smith, in other than the claimant's boats, and in defiance of his rights, it is—what is not in evidence—that it would have put the Government to needless expense to require their transfer at Little Rock from the St. Louis boats to those provided by the petitioner. How much it would have cost the United States to transfer officers, or men, or cattle, from one boat to another, lying at the same landing, we do not know; but certainly the expense would not have been great. More inconvenience might have attended the transfer of freight; but would it have been greater than the inconvenience to the contractor, of being compelled to keep boats ready for service, which they might or might not be called upon to perform? Besides, the question is not as to the consequences, but as to the proper construction of the agreement, and the former can throw no light upon the latter. If there be no ambiguity in a contract, shall one of the parties evade it by showing that it would have been better for him if it had been modified in some particulars? Shall the United States agree to give to a contractor *all the transportation it may need* over a certain route, and then be allowed to withhold from him a large proportion of such transportation, because it is conceived that a cheaper way of doing it might have been found? We submit that this argument, from increased expense, is one that is dependent upon a supposed state of facts not in the record, and which, if proved or admitted, ought not to influence the judgment of the court.

Third. The privilege conferred upon the petitioner by his contract was in the nature of a franchise. It gave him the exclusive right, while the contract was in force, to the Government transportation over his route. Apply the law in analogous cases: Suppose a State grant the exclusive right to a citizen to build a road and collect tolls between B. and C.; that the citizen has built the road upon the faith of this

grant; and that the State then claims the right to grant to another citizen the right to build a road and collect tolls from A. to C., by the way of B.—the last grant overlapping the first, as the route from St. Louis to Fort Smith by water overlaps the route from Little Rock to Fort Smith—on the ground that the travel from A. to C. was not within the route from B. to C. How irrational such a claim! Yet it is precisely upon this ground that the court below gave judgment for the defendants in this suit.

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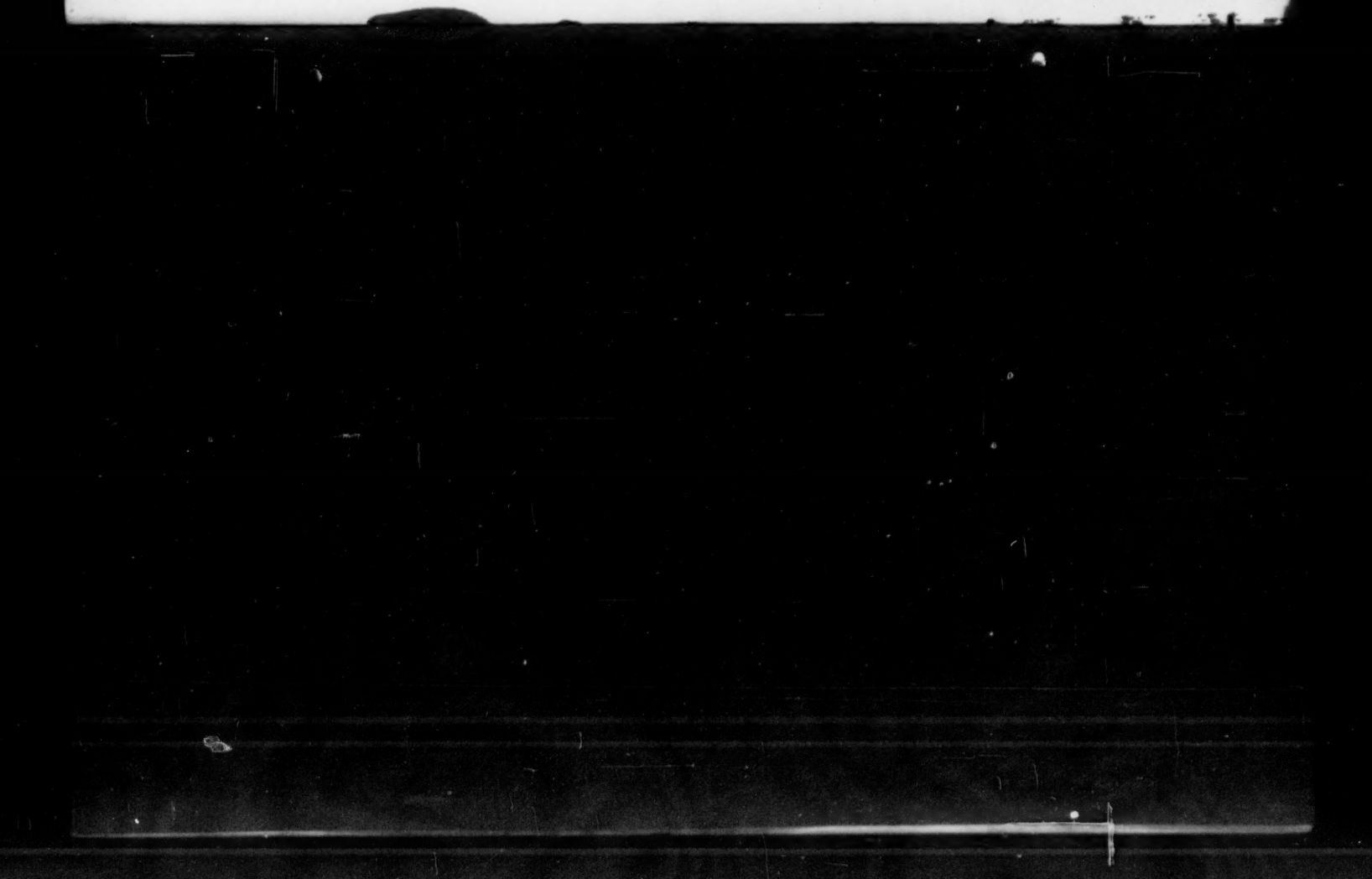
In the Supreme Court of the United States.

DECEMBER TERM, 1870.

CHARLES G. SCOTT
vs.
THE UNITED STATES. } No. 206.

Appeal from the Court of Claims.

BRIEF FOR THE UNITED STATES.



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STATEMENT.

This is an appeal from a judgment of the Court of Claims in favor of the Government on a petition for alleged breach of an agreement made between Colonel Noble, assistant quartermaster, and Scott, the appellant, by which Scott "agrees to furnish all transportation the United States may require from Little Rock, Arkansas, to Fort Smith, Arkansas, and to and from all points between Little Rock, Arkansas, and Fort Smith, Arkansas. When the same is to be furnished by river, the boats used in such transportation must be such as shall be safe and satisfactory to the chief quartermaster of the Department of Arkansas." The contract was dated February 13, 1866. It was "to go into effect on the

20th day of March, and to remain in force until the 31st day of December, 1866."

The court below finds that the petitioner procured, manned, and fitted the steamboats necessary for the performance of said contract, and kept them in serviceable condition during the continuance of the contract, and duly performed the transportation required of him by the United States.

Between April 25 and October 31, 1866, military supplies and troops were shipped by the United States at St. Louis, to be transported thence to Fort Smith and Fort Gibson, and on their way to their destination the vessels having the supplies and troops on board touched at Little Rock, but did not discharge there While the vessels were at Little Rock, the petitioner, in a written communication to Colonel Noble, claimed the transportation to Fort Smith of said supplies and troops from St. Louis under his contract, and he had vessels ready and fit for the transportation of said supplies and troops, but they were not delivered to him. Had the petitioner transported the supplies and troops under his contract, the freight therefor would have amounted to the sum of $17,605 66.

The court held, as a conclusion of law, that the transportation from St Louis to Fort Gibson and Fort Smith was not within the route for which the claimant contracted, and the petition was dismissed.

ARGUMENT.

The decision of the Court of Claims was clearly cor-

rect. Assuming that the Government was bound by this contract to employ Scott for all transportation which they might at any time require during the year, from Little Rock to Fort Smith, such a construction does not give him a right to demand from the Government employment in respect of goods and supplies which were shipped directly from some point beyond Little Rock to Fort Smith. The voyage from St. Louis to Fort Smith, when made under a contract for the whole route, without any unloading of cargo, was as distinct from the voyage from Little Rock to Fort Smith as a voyage from St. Louis to New Orleans would have been. The fact that the course was, for part of the way, a route common to the two voyages, does not make the voyages one. Thus, under the law of insurance, if a vessel, insured from Fort Smith to Little Rock, should have sailed from Fort Smith with the intention and purpose of proceeding to St. Louis, the policy would either never have attached or else it would have been a deviation the moment she left Fort Smith, and the insurers would not have been liable had she been lost upon the route common to both voyages.

The construction contended for on the other side would have given the appellants a monopoly of the river. Under it the appellants would have been entitled to freight on all supplies shipped by the Government from St. Louis or places this side of Little Rock to places beyond Fort Smith; that is to say, where the termini of the two voyages were separate and distinct. The